



Agenda

DATE 8/15/17 TIME 1:24  
SERVED BY Zachary Shandler  
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**ETHICS & CAMPAIGN REVIEW BOARD**

Wednesday, August 23, 2017

3:00 p.m.

City Council Chambers

1<sup>st</sup> Floor, City Hall

200 Lincoln Avenue

**1. PROCEDURES**

- a. Roll Call
- b. Approval of Agenda
- c. Approval of Minutes
  - i. July 13, 2017

**2. DISCUSSION AND POSSIBLE ACTION**

- a. Rio Grande Foundation v. City of Santa Fe/ECRB-- Case No. 1:17-cv-00768-SCY-CG: Executive Session. In Accordance with NMSA 1978, Section 10-15-1H7, Discussion Regarding Threatened or Pending Litigation in Which the City of Santa Fe is a Participant.
- b. Advisory Questions.
  - i. Subcommittee's Advisory Letter regarding the disclosures required under the City of Santa Fe Campaign Code related to Independently Sponsored Campaign Communications and Reporting.
  - ii. Other Advisory Questions from 2017-2018 Election.
    - 1. Organization Question: Does an independently sponsored organization have to file a letter of organization under Section 9-2.7?
    - 2. City Attorney Advisory Opinions
      - Use of City Seal
      - E-Signatures on Seed Money Contribution Forms
- c. Public Comment on Advisory Questions.

**3. BOARD MATTERS**

**4. GENERAL PUBLIC COMMENT**

**5. SCHEDULE NEXT MEETING**

**6. ADJOURNMENT**

**PERSONS WITH DISABILITIES IN NEED OF ACCOMMODATIONS, CONTACT THE CITY CLERK'S OFFICE AT 955-6520, FIVE (5) WORKING DAYS PRIOR TO MEETING DATE.**

**INDEX OF  
CITY OF SANTA FÉ  
ETHICS AND CAMPAIGN REVIEW BOARD**

August 23, 2017

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1. July 13, 2017	Approved as presented	1
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<b>VI. ADJOURNMENT</b>	Adjourned at 4:51 p.m.	8-9

**MINUTES OF THE  
CITY OF SANTA FE  
ETHICS AND CAMPAIGN REVIEW BOARD**

**Wednesday, August 23, 2017**

**I. PROCEDURES**

**A. ROLL CALL**

A special meeting of the City of Santa Fe Ethics and Campaign Review Board was called to order on the above date by Justin Miller, Chair, on this date at approximately 3:09 p.m. in the City Council Chambers, 1<sup>st</sup> floor, City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

Roll call indicated the presence of a quorum as follows:

**Members Present:**

Justin Miller, Chair  
Judith Amer  
Paul Biderman  
Ruth Kovnat  
Kristina Martínez  
Seth McMillan

**Members Absent:**

Tara Luján [excused]

**Staff Present:**

Zachary Shandler, Assistant City Attorney

**Others Present:**

Carl Boaz, Stenographer

**B. APPROVAL OF THE AGENDA**

**MOTION: Member Martínez moved to approve the agenda as presented. Member Kovnat seconded the motion and it passed by unanimous voice vote.**

**C. APPROVAL OF MINUTES**

**1. July 13, 2017**

**MOTION: Member Martínez moved to approve the minutes of July 13, 2017 as presented. Member Kovnat seconded the motion and it passed by unanimous voice vote.**

## **II. DISCUSSION AND POSSIBLE ACTION**

### **A. Rio Grande Foundation v. City of Santa Fe/ECRB Case No. 1:17-cv-00768-SCY-CG**

[Executive Session - In Accordance with NMSA 1978, Section 10-15-1H7, Discussion Regarding Threatened or Pending Litigation in Which the City of Santa Fe is a Participant.]

Chair Miller clarified this is pending litigation and the Board was provided a copy of the complaint. Our understanding was that it had not been served but is now served.

Mr. Shandler agreed that it was served. The City Attorney has asked the Board to go into executive session.

**MOTION: Member Biderman moved to go into executive session in accordance with NMSA 1978, § 10-15-1(H)(7) to discuss threatened or pending litigation in which the City of Santa Fe is a participant; namely, Rio Grande Foundation v. City of Santa Fe/ECRB Case No. 1:17-cv-00768-SCY-CG. Member Kovnat seconded the motion and it passed by unanimous roll call vote with Members McMillan, Martínez, Kovnat, Biderman and Amer voting in the affirmative and none voting against.**

The Board entered executive closed session at 3:13 in the Councilors' Conference Room.

The Board concluded the executive closed session at 3:56 p.m. and returned to City Council Chambers.

**MOTION: Member Kovnat moved to return to open session. Member Biderman seconded the motion and it passed by unanimous roll call vote with Members McMillan, Martínez, Kovnat, Biderman and Amer voting in the affirmative and none voting against.**

Chair Miller stated for the record that during the executive closed session, no actions were taken and the only matter discussed what was listed on the agenda. He further stated that the Board would take no further action at this time.

### **B. Advisory Questions**

#### **1. Subcommittee's Advisory Letter regarding the disclosures required under the City of Santa Fe Campaign Code related to Independently Sponsored Campaign Communications and Reporting.**

A copy of the draft report (Page 4 in the packet) dated August 3 is available on the City web site. Although Member Kovnat was not present for the end of the meeting, Member Martínez agreed that it was accurate.

Member Martínez reported that Member Kovnat and Member Biderman worked with her on it. The report is based on comments from the public and the Subcommittee's understanding of the issues as they developed. She believed this draft advisory opinion captures what they were trying to do. They identified two problems: what disclosures are required when a political committee and/or candidate receives an in-kind contribution of campaign materials. Campaign materials is the distinguishing factor, like the Rio Grande Foundation giving a video to the group instead of funds. Those donors were giving campaign materials whose expenditures otherwise would fall under Section 9-2.6 - Independently Sponsored Campaign Communications and Reporting. The question is what reporting requirements apply to that situation.

They broke it into two questions. The first question, Section 9-2.6(A) requires independent individuals and organizations (basically anyone) - any entity or person must disclose campaign contributions above a certain level. What do the people who receive those expenditures have to disclose?

Member Kovnat added that they looked at both those who make the contributions and also those who receive them.

Member Martínez said they found, in the first one, that those making the contributions need to follow 9.2-6A and then outlined what those disclosures are. People or entities making donations of campaign materials would have to file a report required by that code section, and contributions received from other sources. Any expenditures they made and all the contributions they received from other sources for the purpose of those campaign materials. So if a campaign organization has people giving normal dues, no report would be needed. But if they took up a collection to make campaign materials they would then give to someone else, they would have to list all of those contributors.

Secondly, they would have to specify the contributions that fall into that category by date, amount, mailing address - all of those things required in 9.6 and all other requirements of that section.

Five talks about the situation where you didn't specifically ask for contributions for campaign materials. If you used your company assets, you don't have any contributors but must certify that you used only your business assets for contributions.

Page 6 addresses the other side of the equation. If you are receiving campaign materials as in-kind contributions, the Subcommittee thought the candidates and political committees who get in-kind contributions from independent groups must make two kinds of disclosures. If the independent individual is giving campaign materials like signs or a video, pamphlets, etc., then you report the contribution on your own statement and report getting what it was from this entity. Then, the important part is highlighted. Even though you said you received the materials doesn't mean the person who gave them would not have to follow the reporting requirements if they meet the reporting threshold in 9-6.2A.

If you receive materials from a person or entity that doesn't have to disclose its contributors, then it should say that on the statement.

Member Biderman added that item 4 on page 5 is more specific, saying when someone gets a contribution from an organization not required to disclose, it must say that on the disclosure.

Mr. Shandler said to clarify any confusion, on page 7 and several pages of forms, he made up a group who gave materials valued over \$1,000 - This group must file a campaign form, as shown in the packet.

Member Kovnat said as a general comment, it would be a good idea for one or more board members to meet with Mr. Shandler rather than from the bench. Also, that scenario is not distribution of campaign materials. She would hesitate to respond to this hypothetical from this bench and would prefer to meet separately to determine how to treat it.

Section 2.6A is captured if they spend more than \$250. They have a disclosure requirement of those who contributed the materials. If they are simply businesses and use their assets, they are just contributors to the entity or candidate. We want to avoid a certification.

Mr. Shandler understood. On September 1, candidates will come get their packet of material. The first reporting date isn't until January. Page 9 is the current form. That was the so-called check box people were not sure they should sign. Page 11 moves it to the third column - a check box column. We are trying to get language for it. The form would add that column on the in-kind contribution forms. Then page 15, at the first asterisk, added a sentence which on page 17, we tried to change from negative language to positive language and would like input on that.

Chair Miller asked if it would be helpful for the subcommittee to meet with Mr. Shandler and the Clerk.

Mr. Shandler agreed.

Member Biderman thought it would help to say the donor has to disclose it. That is on page 11 and also on page 13.

Member Martinez asked if in-kind covers more than campaign materials.

Member Amer suggested a footnote could give a definition of in-kind contributions.

Member Biderman agreed. That needs to be clear.

Member Kovnat said the subcommittee members should meet with the City Attorney and City Clerk to make it clear and bring back the results of that meeting. Campaign materials fall within 9-2.6 and also have to be disclosed by the donor.

Chair Miller asked if the Board should approve this advisory opinion. The Clerk and the City Attorney are responsible for creating a form for those requirements. The Subcommittee drafted the advisory letter and he asked for any comment about it.

**MOTION: Member Biderman moved to adopt the advisory opinion and to consider the questions raised by the City Attorney for further application. Member Kovnat seconded the motion.**

Public Comment was solicited.

Ms. Ferguson, with Common Cause New Mexico, said the Board is going in the direction they support and thanked the Board for its work.

Chair Miller said the Board is in receipt of Mr. Harrington's letter. [A copy of his letter is attached to these minutes as Exhibit 1.]

Ms. Karen Heldmeyer agreed with Member Kovnat. There are many convolutions in the law. Soon after the next election, she urged the Board to take everything learned from it and the past election to make recommendations to Council about how the law can be cleaned up. She asked the Board to try to make it as uniform as possible. Also, on page 5, the business exception we heard about will be a really easy way to hide money. She asked how it could be proved the money was for a specific purpose or not. It is a loophole people could use. It will probably be used a lot.

There were no other speakers from the public regarding this report and the public hearing portion was closed.

Member Amer asked regarding question one that, if it is published somewhere on a website, that an average person of normal intelligence could look at the question, and find it doesn't have enough specifics, if that person doesn't know exactly what is in 9-2.6A says. The Code talks about certain threshold requirements, for instance. Could it be more specific without having to look up and find what the code says? What are the disclosure obligations for giving or receiving these kinds of expenditures?

Member Biderman couldn't argue with that point. We were picking out something already adopted as an ordinance. It may be something we didn't think of.

Member Amer asked who the audience is. We aren't writing this for the public.

Chair Miller agreed.

Member Martinez suggested questions and answers to deal with the topic.

Chair Miller was not sure quoting from the ordinance itself improves the letter, itself. He proposed if people have ideas about how to amend the letter, the Board would consider them.

Member McMillan thought people would have to either be familiar with the Section 9-2.6 or find it. He asked if Question 1 was supposed to be addressing disclosure obligations of those to make expenditures and Question 2 respected those who receive and would suggest taking out giving or receiving and say, "for people who make these kinds of expenditures" as the last part of Question 1.

Chair Miller said that seems to make sense.

Member Kovnat asked if this would be posted on the web site. It might be posted together to repeat those part of the ordinance, since it speaks so directly to that part of the provisions.

Member Amer thought that was a good idea.

Member McMillan said they could attach the reference itself right there but he didn't think the entire text needed to be repeated in that opinion.

Member Kovnat said it was the thrust of her suggestion was that it be provided.

Member Amer said then it would be sufficient information for an ordinary person, rather than hunting around for it.

Member Kovnat suggested inserting the ordinance as an appendix.

Mr. Shandler thought that seemed feasible.

**VOTE: The motion to approve advisory letter as amended passed by unanimous voice vote.**

## **2. Other Advisory Questions from 2017-2018 Election**

### **a. Letter of organization under Section 9-2.7**

Mr. Shandler read that section and the City Clerk got a question from a group that wanted to organize as an independent sponsor group, whether they had to file a letter of organization and whether Section 9-2.7 applied to them, either though not a traditional political committee. They voluntarily sent in a letter of organization. But in the future, the City Clerk's office wanted to know if an independent sponsor group had to file such a letter under 9-2.7.

He suggested referring it to the Subcommittee to deal with it later.

### **b. City Attorney Advisory Opinions**

Mr. Shandler said he received memos regarding two other questions on potential candidates. One dealing with use of a seal on campaign materials, and electronic signatures on seed money forms.

Chair Miller went back to the first question whether the organization must file a statement of organization. That may be something the Board could answer today.



Member Kovnat asked for some more examples.

Mr. Shandler said in the recent election, Smart Progress for New Mexico is considered an independent organization.

Chair Miller said it does matter, if they meet the definition.

Mr. Shandler agreed. Santa Fe elections are a little more in the 21<sup>st</sup> century now.

Member Kovnat pointed out that political committees are founded for purpose of supporting or defeating a candidate or issue in an election. 9-2.7 says every political committee. It seems independent organizations don't fit that definition.

Mr. Shandler agreed but didn't want to make that decision. He is pushing more and more for advisory opinions.

Member Kovnat asked if the Chair wanted to appoint another subcommittee.

Chair Miller sensed reluctance. There is potential of overlap. He was not sure that is a complicated question except in its interpretation.

Member Kovnat thought if questions come up, it would be wise to refer them here.

The Board briefly discussed it further and then Chair Miller went back to the other questions.

- **Use of City Seal**

The Board said the Attorney's opinion was excellent. There were no other comments about the use of the City Seal on campaign materials.

- **E-Signatures on Seed Money Contribution Forms**

Member Biderman recalled the Board said they wanted to allow electronic signing.

Mr. Shandler said the Governing Body did not adopt that form.

Member Luján asked if an electronic signature includes a PDF of the signature

Mr. Shandler described electronic signatures as scanned signatures.

Member Biderman thought the Board should do whatever to make it easier but the Council has not agreed. He pointed out that there could be a concern for that signature to be hacked and used elsewhere.

There no further comments.

### **C. Public Comment on Advisory Questions**

Chair Miller noted the Board already heard comment on the first advisory letter.

There were no other comments on advisory opinions.

### **III. BOARD MATTERS**

Chair Miller said there was a complaint filed and distributed to the Board by the Clerk regarding the Mayor's Committee on Disability.

Mr. Shandler clarified that an appointee to the Mayor's Committee on Disability filed an ethic complaint form to this Board on the behavior of a City employee at a public hearing. The City employee has not yet filed a response and that is why it is not on this agenda. If there is no resolution, it will be on the next agenda.

### **IV. GENERAL PUBLIC COMMENT**

There were no public comments.

### **V. SCHEDULE NEXT MEETING**

Chair Miller said that not having a response yet meant they would not set the date for the next meeting.

Mr. Shandler didn't want a meeting scheduled too far out. This is likely to be a contested election.

Chair Miller suggested maybe a month to a month and a half. He asked that members share with him their trial and out-of-town schedules.

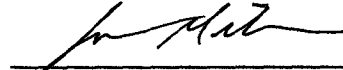
Member Kovnat asked for Mr. Shandler's suggested times for her and Member Martínez to meet with him.

### **VI. ADJOURNMENT**

**MOTION:** Member Kovnat moved to adjourn the meeting. Member McMillan seconded the motion and it passed by unanimous voice vote.

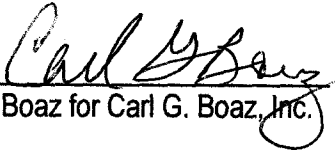
The meeting was adjourned at 4:51 p.m.

Approved by:



Justin Miller, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.

Ethics and Campaign Review Board  
August 23, 2017

**EXHIBIT 1**

## SHANDLER, ZACHARY A.

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**From:** James Harrington <harr77@earthlink.net>  
**Sent:** Monday, August 21, 2017 6:11 PM  
**To:** Justin Miller  
**Cc:** SHANDLER, ZACHARY A.; Viki Harrison; Heather Ferguson  
**Subject:** ECRB meeting 8/23 - spending reports under §9-2.6 SFCC

Dear Justin, Zach and board members -

I learned over the weekend that there would be an ECRB meeting this Wednesday. I have been with my family in California since last week and will be here through this Friday, so I won't be able to attend the meeting. Heather Ferguson will instead attend on behalf of Common Cause. However, since I have previously corresponded with the board about one of the important issues on the agenda, I thought I would offer a brief comment on the resolution of that issue that the board is apparently intending to adopt.

The issue I'm referring to is whether a person who has made independent campaign expenditures of the kind that are covered by Section 9-2.6(A) SFCC is exempted from filing the report that is required by that section if some other campaign participant has reported those same expenditures as "in-kind contributions" under Section 9-2.11(A). As you know, several independent spenders participating in the last election evidently assumed that Section 9-2.6(A) allowed such an exemption, because they failed to file reports of numerous independent expenditures made by them that were plainly covered by Section 9-2.6, and all this independent spending was instead simply reported as vaguely described "in-kind contributions" for things like "media" or "direct mail piece" by one of the two political committees who were also participating in the election. Common Cause, as you recall, took the position in our e-mails to the board and the city attorney that this practice was improper, that Section 9-2.6(A) allowed no such exemption, and that the persons who made these expenditures were therefore required to file the expenditure reports that are prescribed by that section regardless of whether or not their expenditures had also been reported as "in-kind contributions" to some other person under Section 9-2.11. Any other interpretation of the code, we pointed out, would permit easy evasion of the detailed reporting requirements of Section 9-2.6(A).

We at Common Cause are gratified to see that this is precisely the position taken by the board in the draft of Advisory Opinion #17-01 that is included in the packet for Wednesday's meeting. That draft clearly states that all persons making expenditures covered by Section 9-2.6(A) must file a report of those expenditures under that section, and that the inclusion of those expenditures in a list of "in-kind contributions" filed by some other campaign participant *"does not absolve the individual or entity making the expenditures governed by Section 9-2.6 from the reporting requirements of that provision"* (italics in original). We commend the board for taking this stance, and we urge the board to adopt it as the board's official position in the final version of the proposed advisory opinion.

Thank you for your attention. I apologize for my inability to attend the meeting, but I'm sure Heather will ably present our views and will be able to answer any questions you may have on this subject.

Jim H.